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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,699	09/04/2003	Loren R. Graber	20794-82667	8589

7590 06/28/2006

Barnes & Thornburg
600 One Summit Square
Fort Wayne, IN 46802

EXAMINER

SPAHN, GAY

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 06/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/656,699	GRABER ET AL.	
	Examiner	Art Unit	
	Gay Ann Spahn	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/30/06 (see attached *Interview Summary*).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-13 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-13 and 15-19 is/are rejected.
- 7) ☒ Claim(s) 11 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. <u>3/30/06 Interview</u> . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Response to Amendment

Applicant's request for reconsideration of the finality of the rejection of the last Office Action is persuasive and therefore, the finality of that action mailed on 24 October 2005 is withdrawn (see attached Interview Summary (Form-PTOL-413) summarizing 30 March 2006 telephone conversation between Pre-Appeal Conference Specialist Darnell M. Jayne and Attorney Greg Cooper).

The examiner will proceed with an examination of the claims as they appear in the Amendment filed on 27 February 2006.

Drawings

The drawings are objected to because:

(1) on page 2, lines 7-9 (paragraph beginning "Fig. 2 is a cross-sectional view . . .", of the Amendment filed on 27 February 2006, Applicants amended the specification to describe a section line "11-11" (although it should have been --2-2-- or --II-II--) in Fig. 1, but Fig. 1 has not been amended to show the section line.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure

is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities:

(1) on page 2, lines 7-9 (paragraph beginning "Fig. 2 is a cross-sectional view . . .", of the Amendment filed on 27 February 2006, Applicants amended the specification to describe a section line "11-11" in Fig. 1 in response to the examiner's objection to the specification (no. 2 under the heading "Specification" on page 7 of the 24 October 2005 Office Action), but appears to have labeled the section line "11-11" which is incorrect and should be changed to either --2-2-- or --II-II--.

Appropriate correction is required.

Claim Objections

Claims 11 and 12 are objected to because of the following informalities:

(1) claim 11, line 2 and claim 12, line 2, the recitations of “removable portions” (emphasis added) is vague, indefinite, and confusing because it is not clear if this is referring back to the “selectively removable portion” recited in the last line of claim 8 and at least one additional removable portion or if it is reciting removable portions in addition to the selectively removable portion recited in the last line of claim 8.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 8, 13, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by SINANAN (U.S. Patent No. 5,852,895).

As to claim 8, SINANAN discloses a landscaping channel liner apparatus (see Fig. 6 embodiment) comprising:

a longitudinally-extending trough (planter box 61) having a longitudinally-extending floor (bottom wall of planter box 61) located between opposed longitudinally-extending sidewalls (side walls of planter box 61) extending therefrom, and having first and second opposed transverse open ends (open ends at left and right ends of each section of planter box 61) formed from the floor and sidewalls;

wherein each of the sidewalls defines a longitudinally-extending edge located opposite the longitudinally-extending floor;

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a receptacle (inwardly turned/rolled upper edges 63) located on each of the longitudinally-extending edges;

a connector (hose-like conduit 65) engaged with the receptacle (inwardly turned/rolled upper edges 63), extending therefrom, and spaced apart from and positioned substantially parallel to the longitudinally-extending edge; and

a selectively removable portion (support bracket 67) configured to receive a post (the claim language of "configured to receive a post" is a recitation of intended use which the examiner must show that the reference is capable of performing, and clearly the support bracket 67 of SINANAN is capable of performing the intended use of receiving a post since the bottom of the support bracket 67 has a downwardly opening sleeve 71 which receives a ground spike 73 (i.e., post)).

As to claim 13, SINANAN discloses the landscaping channel liner apparatus of claim 8 as discussed above, and SINANAN also discloses that the connector (hose-like conduit 65) interference fits in the receptacle (inwardly turned/rolled upper edges 63).

As to claim 16, SINANAN discloses the landscaping channel liner apparatus of claim 8 as discussed above, and SINANAN also discloses that the selectively removable portion is a plurality of selectively removable portions (a support bracket 67 at the left and right ends of each section of planter box 61 constitutes "a plurality of selectively removable portions" (see col. 4, lines 51-55)).

Claims 8, 11, 13, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by SINANAN as evidenced by TER HORST (European Patent Publication No. 0 276 515).

As to claim 8, SINANAN discloses a landscaping channel liner apparatus (see Fig. 6 embodiment) comprising:

a longitudinally-extending trough (planter box 61) having a longitudinally-extending floor (bottom wall of planter box 61) located between opposed longitudinally-extending sidewalls (side walls of planter box 61) extending therefrom, and having first and second opposed transverse open ends (open ends at left and right ends of each section of planter box 61) formed from the floor and sidewalls;

wherein each of the sidewalls defines a longitudinally-extending edge located opposite the longitudinally-extending floor;

a receptacle (inwardly turned/rolled upper edges 63) located on each of the longitudinally-extending edges;

a connector (hose-like conduit 65) engaged with the receptacle (inwardly turned/rolled upper edges 63), extending therefrom, and spaced apart from and positioned substantially parallel to the longitudinally-extending edge; and

a selectively removable portion configured to receive a post (the claim language of “a selectively removable portion configured to receive a post” imparts no structure that is not shown by SINANAN so that one of ordinary skill in the art would consider SINANAN to inherently have a selectively removable portion because any portion of SINANAN’s floor and sidewalls is selectively removable, as by cutting, punching, etc., to

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receive a post or other structure as evidenced by Figs. 1A, 1B, 2, 3, and 4 of TER HORST). See the Manual of Patent Examining Procedure (MPEP) § 2131.01(III).

As to claim 11 (and as best as can be understood despite the objection discussed above), SINANAN as evidenced by TER HORST discloses the landscaping channel liner apparatus of claim 8 as discussed above on page 6, and SINANAN also discloses that the floor comprises removable portions (the claim language of “removable portions” imparts no structure that is not shown by SINANAN so that one of ordinary skill in the art would consider SINANAN to inherently have removable portions because portions of SINANAN's floor and sidewalls are removable, as by cutting, punching, etc., to receive posts or other structures as evidenced by Figs. 1A, 1B, 2, 3, and 4 of TER HORST).

As to claim 13, SINANAN as evidenced by TER HORST discloses the landscaping channel liner apparatus of claim 8 as discussed above on page 6, and SINANAN also discloses that the connector (hose-like conduit 65) interference fits in the receptacle (inwardly turned/rolled upper edges 63).

As to claim 16, SINANAN as evidenced by TER HORST discloses the landscaping channel liner apparatus of claim 8 as discussed above on page 6, and SINANAN also discloses that the selectively removable portion is a plurality of selectively removable portions (the claim language of “a plurality of selectively removable portions” imparts no structure that is not shown by SINANAN so that one of ordinary skill in the art would consider SINANAN to inherently have selectively removable portions because portions of SINANAN's floor and sidewalls are removable,

as by cutting, punching, etc., to receive posts or other structures as evidenced by Figs. 1A, 1B, 2, 3, and 4 of TER HORST).

Claim Rejections - 35 USC § 103

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over SINANAN , either alone as discussed on pages 4-5 or as evidenced by TER HORST as discussed on pages 6-7, in view of REUM et al. (U.S. Patent No. 4,761,923).

As to claim 9, SINANAN, either alone or as evidenced by TER HORST, discloses the landscaping channel liner apparatus of claim 8 as discussed above either on pages 4-5 or on pages 6-7, respectively.

SINANAN, either alone or as evidenced by TER HORST, fails to explicitly disclose that a receptacle from a second landscaping channel liner apparatus engages the connector by fitting between the longitudinally-extending edge and the connector.

REUM et al. disclose a landscape edging apparatus (11 in Fig. 19-21 embodiment) having sidewalls which each have a receptacle (14) on longitudinally-extending edges thereof wherein a receptacle (14) from a second landscaping channel liner apparatus (11) engages the connector (71) by fitting between the longitudinally-extending edge and the connector (71). See col. 8, lines 10-58 and Figs. 19-21, wherein REUM et al. discloses an embodiment having a fluid coupler 71 which is hollow and has ends that are open to permit water to flow therethrough (lines 21-22) and

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tubular rails 14 with spaced drip/spray holes (line 50) which are capable of spraying or dripping water.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the landscaping channel liner apparatus of SINANAN, either alone or as evidenced by TER HORST, by substituting the overlapping sidewall (due to the cut-out or notched portion of the tubular rail 14 as most clearly seen in Fig. 1 of REUM et al.), tubular rail (14 having spaced drip or spray holes - see col. 8, line 50), and fluid coupler (71) type of connection as taught by REUM et al. for the abutting ends of the inwardly turned/rolled upper sidewall portion (63) and hose-like conduit (65) type connection of the planter box sections (61) of SINANAN in order for the nested sidewalls to provide greater strength (due to double thickness) and less chance of separation at abutted ends, while still maintaining the spraying water function. See REUM et al., col. 5, lines 37-44 which teaches the desirability of nesting the end portions of the sidewalls to facilitate installation and co-axial alignment of mating sections.

As to claim 10, SINANAN, either alone or as evidenced by TER HORST, discloses the landscaping channel liner apparatus of claim 8 as discussed above either on pages 4-5 or on pages 6-7, respectively.

However, SINANAN, either alone or as evidenced by TER HORST, fails to explicitly disclose that the floor of a second landscaping channel liner apparatus overlaps a portion of the floor of the landscaping channel liner apparatus.

REUM et al. disclose a landscape edging apparatus (11 in Figs. 19-21 embodiment) having sidewalls which each have a receptacle (14) on longitudinally-extending edges thereof wherein the receptacle (14) on one sidewall is shorter than the length of the sidewall so that sidewalls on adjacent landscape edging apparatus (11) overlap.

The examiner notes that REUM et al. does not explicitly disclose that a portion of the floor of a second landscaping channel liner apparatus would overlap a portion of the floor of the landscaping channel liner apparatus. SINANAN, either alone or as evidenced by TER HORST, modified by REUM et al. as set forth in claim 9 above would necessarily have overlapping floors in the same manner as the overlapping sidewalls.

Claims 12, 15, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over SINANAN, as evidenced by TER HORST, in view of MASON, III (U.S. Patent No. 5,379,558).

As to claims 12 (and as best as can be understood despite the objection discussed above), 15, 17, 18, and 19, SINANAN discloses the landscaping channel liner apparatus of claims 11, 8, 16, 16, and 8, respectively, as discussed above on pages 6, 6-7, 7-8, 7-8, and 6-7, respectively.

SINANAN, as evidenced by TER HORST, fails to explicitly disclose that:

- (1) the removable portions are perforated segments (claim 12);
- (2) the selectively removable portion is defined by at least one perforated seam (claim 15);

(3) the plurality of selectively removable portions are each defined by at least one perforated seam (claim 17);

(4) the plurality of selectively removable portions share a common perforated seam (claim 18); and

(5) the selectively removable portion comprises a seam extending therefrom to the periphery of the longitudinally-extending floor (claim 19).

MASON, III (see Figs. 4-5) discloses a ground covering mat (110) for ground anchored structures (112), wherein:

(1) the mat (110) has selected scored portions (118) which are deemed to constitute perforated segments (claim 12);

(2) the mat (110) has a score line (122) which is deemed to constitute at least one perforated seam (claim 15);

(3) the mat (110) has selected scored portions (118) and a score line (122) which are deemed to constitute a plurality of selectively removable portions which are each defined by at least one perforated seam (i.e., the score line (122) (claim 17);

(4) the mat (110) has selected scored portions (118) and a scored line (122) which are deemed to constitute perforated segments and a common perforated seam (claim 18); and

(5) the mat (110) has selected scored portions (118) and a scored line (122) which are deemed to constitute the selectively removable portions and seam. The score line or seam (122) of Mason, III extends from the selectively removable portions

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or scored segments (118) to the periphery of the longitudinally-extending floor (claim 19).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the landscaping channel liner apparatus of SINANAN, as evidenced by TER HORST, by

(1) including selectively removable portions which are constituted by perforated segments (as specifically recited in claim 12)

(2) including a selectively removable portion which includes a perforated seam (as specifically recited in claim 15)

(3) including selectively removable portions which are constituted by perforated segments and a perforated seam (as specifically recited in claim 17)

(4) including selectively removable portions which are constituted by perforated segments and a common perforated seam (as specifically recited in claim 18)

(5) including selectively removable portions which are constituted by perforated segments and a perforated seam (as specifically recited in claim 19)

as taught by MASON, III in order to be able to use the landscaping channel liner apparatus in a lawn or yard which has already pre-existing structures, such as the telephone terminal box 112 (col. 5, lines 6-7) of MASON, III, which would otherwise get in the way and prevent the laying of the landscaping channel liners.

Claims 1, 3-5, and 7 rejected under 35 U.S.C. 103(a) as being unpatentable over SINANAN in view of REUM et al.

As to claim 1, SINANAN discloses a landscaping channel liner apparatus (see Figs. 19-21 embodiment) comprising:

a longitudinally-extending trough (planter box 61) having a longitudinally-extending floor located between opposed longitudinally-extending sidewalls extending therefrom, and having first and second opposed transverse open ends formed from the floor and sidewalls;

wherein each of the sidewalls defines a longitudinally-extending edge located opposite the longitudinally-extending floor;

a longitudinally-extending receptacle (inwardly turned/rolled upper edge 63) located on each longitudinally-extending edge, each receptacle (inwardly turned/rolled upper edge 63) having first and second transverse open ends;

wherein the first transverse open end of the longitudinally-extending receptacle (inwardly turned/rolled upper edge 63) faces the second transverse open end of another longitudinally-extending receptacle (inwardly turned/rolled upper edge 63); and

wherein the first transverse open end of one longitudinally-extending receptacle (inwardly turned/rolled upper edge 63) mates with the second transverse open end of the other longitudinally-extending receptacles (inwardly turned/rolled upper edge 63), and the longitudinally-extending receptacles are essentially flush with each other.

SINANAN fails to explicitly disclose that each of the longitudinally-extending sidewalls and floor extend longitudinally beyond the first transverse open end of each of the longitudinally-extending receptacles.

REUM et al. discloses a landscape edging apparatus (11 in Figs. 19-21 embodiment) having sidewalls which each have a receptacle (14) on longitudinally-extending edges thereof wherein each of the longitudinally-extending sidewalls extend longitudinally beyond the first transverse open end of each of the longitudinally-extending receptacles (14).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the landscaping channel liner apparatus of SINANAN by substituting the overlapping sidewall (due to the cut-out or notched portion of the tubular rail 14 as most clearly seen in Fig. 1 of REUM et al.), tubular rail (14 having spaced drip or spray holes - see col. 8, line 50), and fluid coupler (71) type of connection as taught by REUM et al. for the abutting ends of the inwardly turned/rolled upper sidewall portion (63) and hose-like conduit (65) type connection of the planter box sections (61) of SINANAN in order for the nested sidewalls to provide greater strength (due to double thickness) and less chance of separation at abutted ends, while still maintaining the spraying water function. See REUM et al., col. 5, lines 37-44 which teaches the desirability of nesting the end portions of the sidewalls to facilitate installation and co-axial alignment of mating sections.

As to claim 3, SINANAN in view of REUM et al. discloses the landscaping channel liner apparatus of claim 1 as discussed above on pages 13-14, and SINANAN

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in view of REUM et al. also discloses first and second connectors, wherein the first connector is partially fitted in the first transverse open end of the first longitudinally-extending receptacle and wherein the second connector is partially fitted in the other of the longitudinally-extending receptacles through its first transverse open end.

As to claim 4, SINANAN in view of REUM et al. discloses the landscaping channel liner apparatus of claim 3 as discussed above on pages 14-15, and SINANAN in view of REUM et al. also discloses that a portion of the first connector extends from the first transverse open end of one of the longitudinally-extending receptacles and is fitted into the second transverse open end of one of the longitudinally-extending receptacles of a second landscaping channel liner apparatus, and wherein a portion of the second connector extends from the first transverse open end of the other of the longitudinally-extending receptacles and is fitted into the other second transverse open end of the other of the longitudinally-extending receptacles of the second landscaping channel liner apparatus.

As to claim 5, SINANAN in view of REUM et al. discloses the landscaping channel liner apparatus of claim 4 as discussed above on page 15, and SINANAN in view of REUM et al. also discloses the second transverse open end of the second landscaping channel liner apparatus is at least partially encompassed by a portion of the landscaping channel liner apparatus at the first transverse open end.

As to claim 7, SINANAN in view of REUM et al. discloses the landscaping channel liner apparatus of claim 3 as discussed above on pages 14-15, and SINANAN

in view of REUM et al. also discloses that the first and second connector's interference fit in their respective longitudinally-extending receptacles.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over SINANAN in view of REUM et al., as applied to claims 1, 3, and 4 above on pages 13-15, and further in view of THOMAS (U.S. Patent No. 5,315,780).

As to claim 6, SINANAN in view of REUM et al. discloses the landscaping channel liner apparatus of claim 4 as discussed above on page 15.

Neither SINANAN nor REUM et al. explicitly disclose spikes that extend from at least one of the sidewalls.

THOMAS discloses a lawn edging material anchoring arrangement wherein a landscape edging device has spikes (see Fig. 2) extending from at least one of the sidewalls.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the landscaping channel liner apparatus of SINANAN in view of REUM et al. to include spikes through the sidewall as taught by THOMAS in order to provide surer anchoring of the channel liner apparatus to the ground.

Response to Arguments

Applicant's arguments with respect to claims 1, 3-13, and 15-19 have been considered but are not persuasive.

With respect to Applicants' arguments on page 11 (and at other places throughout the Amendment filed on 27 February 2006) that SINANAN fails to show "a selectively removable portion", the examiner notes that any portion of any item is considered "selectively removable" minus any language serving to distinguish otherwise. The examiner notes that the U.S. Patent Office is charged with interpreting a claim as broadly as reasonably possible and therefore, the broad recitation of "a selectively removable portion" is met by the SINANAN reference. Applicants could have chosen narrower claim language such as reciting perforations, but instead chose the broader language of "a selectively removable portion" and therefore, the SINANAN reference inherently discloses "a selectively removable portion" since any portion of the floor or sidewalls of the planter box of SINANAN is selectively removable as by cutting. Further, TER HORST is cited as evidence (see MPEP § 2131.01(III)) of the fact that SINANAN inherently has a selectively removable portion.

With respect to Applicants' arguments beginning on page 11 of the Amendment filed on 27 February 2006 that the term "landscape channel liner" is a term of art. It is not apparent to examiner that the term "landscaping channel liner" has any specific meaning within the art that would serve to read over the applied prior art. Further, Applicant appears to be arguing a combination of elements when the language of the rejected claims is directed to a liner per se.

On pages 14 and 17 of the Amendment filed on 27 February 2006, it is noted that Applicants have reproduced Figs. 1-5 of SINANAN and argued that SINANAN discloses a "raised planter." The examiner notes that she has not applied the embodiment of

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SINANAN shown in Figs. 1-5. The examiner has only applied the embodiment of SINANAN shown in Figs. 6-7 and there is nothing in SINANAN precluding the Figs. 6-7 embodiment thereof (or the other embodiment for that matter) from being sunk below ground. Indeed, the examiner cites U.S. Patent No. 5,222,326 to HIGGINS (Figs. 11 and 12), U.S. Patents No. 6,986,222 to COCHRAN (Figs. 2 and 12), U.S. Patent No. 5,953,859 to COCHRAN et al. (Figs. 1, 2, and 4), U.S. Patent No. 5,966,870 to MICHAILIUK (col. 2, lines 3-5), and U.S. Patent No. 5,996,280 to MICHAILIUK (col. 2, lines 15-17, wherein it states that the soil conserving planter is "particularly adapted for external inground usage") as evidence that it is well known in the art to place planters in the ground.

On page 19 of the Amendment filed on 27 February 2006, Applicants argue that SINANAN's "hose-like conduits" (65) which are housed in the "inwardly turned or rolled upper edges of the side walls" (63) are not connectors. The examiner disagrees. Anything capable of connecting two things may be considered a connector. Further, there must be some friction or interference fit between the "hose-like conduits" (65) and the "inwardly turned or rolled upper edges of the side walls" (63) or else the hose would not stay in place (i.e., would fall down due to gravity). However, in view of the examiner's new rejection based upon the Figs. 19-21 embodiment of REUM et al., it is moot whether the "hose-like conduits" (65) of SINANAN could constitute connectors or not because the hose-like conduits have been replaced by the overlapping sidewalls, tubular rails (14) having a cut-out portion to form the overlapping sidewalls and spaced

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drip/spray holes, and fluid coupler (71) of REUM et al. which clearly constitute connectors.

With respect to Applicants' argument in the Amendment filed on 27 February 2006 that a prima facie case of obviousness has not been established with respect to the combination of SINANAN and REUM et al., the examiner disagrees.

First, the examiner notes (and Applicants have acknowledged) that the motivation to combine SINANAN and REUM et al. need not be found either explicitly or implicitly in the references, but can be found in the knowledge generally available in the art. In the present case, it is both implicit from REUM et al. and also well within the knowledge of one of ordinary skill in the art to "nest" or overlap sidewalls in order to provide more strength to that area than if just one sidewall portion were present and to provide a more sure connection rather than just abutting two ends of a planter box up against each other.

Second, with respect to Applicants' argument that modifying SINANAN by the teachings of REUM et al. would destroy the SINANAN planter for its intended purpose, the examiner notes that her rejections as now restated and using the Figs. 19-21 embodiment of REUM et al. would not make SINANAN unfit for its intended purpose of spraying water.

With respect to Applicants' arguments in the Amendment filed on 27 February 2006 that a prima facie case of obviousness has not been established with respect to the combination of SINANAN and MASON, III because SINANAN would be destroyed for its intended purpose of being a raised planter, the examiner disagrees. SINANAN's

intended purpose is not specifically to be a "raised planter," but rather simply to be a planter that sprays water and it can perform this function whether it is above ground or in-ground. Further, as stated above, it is well known in the art to place planters in the ground. Therefore, the combination of SINANAN and MASON, III does not destroy the SINANAN planter for its intended purpose.

Conclusion

Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 4,223,480 to Welty discloses a potted plant

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transfer liner having perforations/holes for drainage. U.S. Patent No. 5,222,326 to Higgins, U.S. Patent No. 6,986,222 to Cochran, U.S. Patent No. 5,953,859 to Cochran et al., U.S. Patent No. 5,966,870 to Michailiuk, and U.S. Patent No. 5,996,280 to Michailiuk all disclose that it is well known in the art to put planters in the ground. U.S. Patent No. 4,897,973 to Foster, Jr. et al. discloses a liner with stakes through hole in bottom (see Fig. 4). U.S. Patent No. 4,120,119 to Engel discloses a planter. U.S. Patent No. 3,933,311 to Lemelson discloses fencing having water spraying capabilities. U.S. Patent Application Publication No. 2004/0216479 to Boissevain disclose a gravel container disposed in the ground in Fig. 7.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gay Ann Spahn whose telephone number is (571)-272-7731. The examiner can normally be reached on Monday through Thursday, 8:30 am to 7:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia L. Engle can be reached on (571)-272-6660. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GAS
Gay Ann Spahn, Patent Examiner
June 25, 2006

Patricia L. Engle
PATRICIA L. ENGLE
PRIMARY EXAMINER